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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,940	01/17/2001	Brian Thornton	BT5302	6173
7590 Mark Rogers Speed & Rogers, P.A. Suite 125 1701 Centerview Little Rock, AR 72211			EXAMINER GANEY, STEVEN J	
			ART UNIT 3752	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			01/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 09/761,940	Applicant(s) THORNTON, BRIAN	
	Examiner Steven J. Ganey	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-18 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-18 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Receipt is acknowledged of the amendment filed on June 7, 2004, which has been fully considered in this action.

#### *Double Patenting*

2. Claims 16-18 and 21 of this application conflict with claims 1, 5-7 and 11-13 of Application No. 11/319,114. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claims 16-18 and 21 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 5-7 and 11-13 of copending Application No. 11/319,114. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buchan et al.

Buchan et al discloses an apparatus comprising a dispenser having a lower chamber 18, an upper chamber 16, an upstream opening 22, a downstream opening 24; a lower portion of the upper chamber being disposed below an upper portion of the lower chamber and above a lower portion of the lower chamber wherein the lower portion of the lower chamber being unobstructed over substantially its entire length, see Figure 4; a first valve 88 and a second valve 96, except for the valves being electrically powered. Note that Buchan et al discloses using a solenoid valve(i.e. electrically powered valve) 204 in the upstream opening of the embodiment in figure 5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide electrically powered valves for the first and second valves 88/96 of Buchan et al, since Buchan et al teaches using such a valve in the Figure 5 embodiment and it would merely be the substitution of one known valve means for another valve means.

7. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchan et al in view of Reeves or Fredericks.

Buchan et al, as discussed above, discloses all the featured elements of the instant invention including a plurality of openings 42 passing through a side surface, except for a

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plurality of openings passing through a bottom surface of the lower portion of the upper chamber.

Reeves discloses a dispenser comprising a cylinder 24 connected to a fitting with an upper chamber 28 having a lower portion 24 with a bottom surface having a plurality of openings 34/38 and a plurality of openings 36 in the side surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of openings in the bottom surface of the lower portion in the cylinder of Buchan et al, as taught by Reeves, since with such a modification the mixing of the tablets with the water is facilitated and the content of the tablets mixing with the water can be controlled by changing the size of the openings in the side and bottom surfaces.

Fredericks discloses a dispenser comprising a cylinder 20 connected to a fitting 38 with an upper chamber having a lower portion 32 with a bottom surface having a plurality of openings 34 and a plurality of openings 50 or 54 in the side surface, see figures 3-5. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of openings in the bottom surface of the lower portion in the cylinder of Buchan et al, as taught by Fredericks, since with such a modification the water entry into the cylinder is facilitated for mixing.

As to claims 17 and 18, the connection means for the first and second valves to the tee connector, whether it is a reducer bushing or other coupling means is a matter of design choice depending on the size of the pipe and the tee connector.

***Conclusion***


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cormier et al and Dupler disclose various types of dispensers having cylinders secured to a fitting with openings in the lower portion.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is 571-272-4899. The examiner can normally be reached on 7:00-5:00; M, Tu, W and Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjg  
12/15/06

  
**STEVEN J. GANEY**  
**PRIMARY EXAMINER**  
12/15/06